

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE, M.D.,

Plaintiff,

v.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN, MARIE
LOZON, M.D., and JUSTIN DIMICK,
M.D., Individually,

Defendants.

Case No. 21-cv-13032
Hon. Gershwin Drain
Hon Mag. Judge Curtis Ivy, Jr

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**DEFENDANTS' RESPONSE IN OPPOSITION TO MOVANT CHARLES
BLACKWELL MOTION TO ALTER JUDGMENT/OPINION**

NOW COME Defendants, by and through their attorneys, HALL, RENDER, KILLIAN, HEATH & LYMAN, PC, and for the reasons set forth in the Brief attached hereto, respectfully request that this Honorable Court deny Movant Charles Blackwell's Motion to Alter Judgment/Opinion. Alternatively, Defendants request that this Court grant the specific relief sought by Defendants in their original Response (ECF No. 27) to the Motion for Leave to Intervene and Unseal Judicial Records. In addition, Defendants request, as an ancillary and housekeeping matter, that the Court grant their Motion to Permit Filings Under Seal (ECF No. 16).

Respectfully submitted,

HALL RENDER KILLIAN HEATH & LYMAN, PC

/s/ Jonathon A. Rabin

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Dated: June 21, 2022

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**DEFENDANTS' BRIEF IN RESPONSE TO MOVANT CHARLES
BLACKWELL MOTION TO ALTER JUDGMENT/OPINION**

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CONCISE STATEMENT OF THE ISSUES PRESENTED

1. Should the Court deny Movant Charles Blackwell's Motion to Alter Judgment/Opinion or, alternatively, should the Court grant the specific relief sought by Defendants in their original Response (ECF No. 27) to the Motion for Leave to Intervene and Unseal Judicial Records?

Defendants respond, "yes."

Movant would respond, "no."

Plaintiff's response is unknown.

2. Should the Court also, as an ancillary and housekeeping matter, rule on Defendants' Motion to Permit Filings Under Seal (ECF No. 16)?

Defendants respond, "yes."

Movant would respond, "no."

Plaintiff's response is unknown.

ARGUMENT

The Motion brought by Mr. Blackwell asks that this Court revisit its ruling that his Motion to Intervene and Unseal Judicial Records (ECF No. 18) was moot. He further asks that the Court “grant his motion to unseal exhibits.”

In response to the request that the Court unseal documents protected by Michigan’s peer review statute, Defendants incorporate by reference the following prior filings on the subject:

1. ECF No. 27: Defendants’ Response to Charles Blackwell’s Motion to Intervene and Unseal Judicial Records; and
2. ECF No. 33: Defendants’ Motion to Permit Surreply to Movant Charles Blackwell’s Reply to Defendants’ Response to Movant’s Motion to Intervene and Unseal Judicial Records.

As shown in those filings, the Movant has not set forth a basis to intervene in this action at all. However, even if he is permitted to intervene, Defendants requested that the Court consider the compelling value of federal-state comity in keeping sealed those documents that are considered privileged under Michigan’s peer review statute. At the same time, Defendants explained that certain of the documents that the movant and proposed intervenor sought to unseal should have been unsealed, namely those which were filed under seal only to mask Plaintiff’s identity (rather

than those which are afforded peer review protections).¹ Defendants repeat those requests by way of this Response.

Moreover, there is an important “housekeeping” matter that Defendants would like the Court to address for the sake of a clear appellate record.² The Court has not ruled on Defendant’s Motion to Permit Filing Certain Documents Under Seal. (ECF No. 16). That Motion sought an order permitting Defendants to: (a) file redacted copies of their responses to Plaintiff’s Motion for Temporary Restraining Order and to Show Cause Why A Preliminary Injunction Should Not Be Issued (ECF No. 3); (b) file unredacted copies of both responses under seal; and (c) file certain of the exhibits to those responses under seal. Those documents were filed under seal as exhibits to Defendants’ Motion to Permit Filings Under Seal.³ However, the Court never entered an order on that Motion. As a result, the Court technically did not record those responses as being filed other than as attachments to ECF No. 16. Accordingly, Defendants ask that the Court grant their Motion to Permit Filings Under Seal (ECF No. 16).

¹ In ECF No. 27, PageID.728, Defendants listed specifically those documents that should be sealed and those that should be unsealed.

² Although this Court’s Opinion dismissing Plaintiff’s claims and denying leave to amend were proper, Plaintiff’s history suggests that he will initiate an appeal to the Sixth Circuit.

³ The sealed attachments are ECF Nos. 17-26.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Honorable Court deny Movant Charles Blackwell's Motion to Alter Judgment/Opinion or, alternatively, grant the specific relief sought by Defendants in their original Response (ECF No. 27) to the Motion for Leave to Intervene and Unseal Judicial Records. In addition, Defendants request, as an ancillary and housekeeping matter, that the Court grant their Motion to Permit Filings Under Seal (ECF No. 16).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2022, I electronically filed the foregoing document and this Certificate of Service with the Clerk of the Court using the ECF system, which will send notification of such filing to attorneys of record at their registered e-mail addresses and will mail the same to Mr. Blackwell to the following address:

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